

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MOPAK SERVICE CENTER, INC.	:	DETERMINATION
		DTA NO. 819386
for Revision of a Determination or for Refund of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for		
the Period December 1, 1997 through November 30, 2000.	:	

Petitioner, Mopak Service Center, Inc., filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1997 through November 30, 2000.

A hearing was held before Frank W. Barrie, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on December 30, 2003 at 10:30 A.M., with all briefs to be submitted by August 6, 2004, which date began the six-month period for the issuance of this determination. Petitioner appeared by Charlotte Betts, Esq. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Jennifer A. Murphy, Esq. of counsel).

ISSUES

- I. Whether the Division of Taxation properly estimated petitioner's taxable fuel sales.
- II. Whether petitioner has substantiated that it overreported nonfuel sales so that it is entitled to an offset against any additional sales tax due on its gasoline sales.

FINDINGS OF FACT

1. Petitioner, Mopak Service Center, Inc., operated a Texaco gasoline station at Franklin Street and 7th Street in Garden City on Long Island during the period at issue. The station had eight pumps for fuel sales, four for self-service and four for full service, and also had four repair bays where car repairs were performed. The business was run as an S corporation by a family, including the 100% shareholder, Philip Fiorentine, Sr., and his two sons, Phil and Joe, and his daughter-in-law, Patti Fiorentine. On the corporation's U.S. income tax returns for 1998 and 1999, the corporation reported "salaries and wages" of \$72,800.00 for each of these respective years, reflecting no employment of individuals other than the above-mentioned family members according to Ms. Fiorentine. The operation went out of business soon after Mr. Fiorentine stepped aside, and his two sons took over.

2. During the three-year period at issue, petitioner reported¹ the sale of 4,692,004 gallons of gasoline and diesel fuel as follows:

QTR Ended	Regular gallons	Premium Gallons	Diesel Gallons	Total Gallons
02/28/98	215,900	176,639	9,400	401,939
05/31/98	200,599	154,825	9,301	364,725
08/31/98	223,500	182,952	9,350	415,802
11/30/98	212,536	173,647	9,310	395,493
02/28/99	207,159	169,493	8,999	385,651
05/31/99	196,540	161,111	9,001	366,652

¹ These amounts were reported by petitioner on its Quarterly FR Schedules (forms ST-100.10). Vendors selling motor fuel or diesel motor fuel at retail are required to file such quarterly schedules to report tax on their taxable sales and purchases of motor fuel or diesel motor fuel. These schedules are then filed as an attachment to the respective quarterly sales and use tax return (form ST-100). At the hearing, petitioner's accountant asserted that on petitioner's "sales tax returns it was 4,582,937," but "[a]s per the auditors, the gallonage was 4 million- 426" (tr., p. 143). The amounts detailed above were based on a schedule prepared by the auditor. The record provides no explanation for the variance.

08/31/99	210,577	172,291	8,901	391,769
11/30/99	241,956	124,644	9,001	375,601
02/29/00	203,166	172,166	8,900	384,232
05/31/00	207,349	169,646	8,901	385,896
08/31/00	232,600	197,720	9,003	439,323
11/30/00	210,144	165,777	9,000	384,921
Totals	2,562,026	2,020,911	109,067	4,692,004

3. On its reported sale of 4,692,004 gallons of gasoline and diesel fuel during the three-year period at issue, petitioner computed total gross sales of gasoline and diesel fuel in the amount of \$5,784,681.00,² of which \$5,196,383.00 was reported as taxable sales, with a total sales tax liability of \$441,692.60 (calculated at the Nassau County sales tax rate of 8.5% on such taxable sales of \$5,196,383.00).

4. On its sales tax returns for the period at issue,³ petitioner reported total taxable sales of \$950,057.00⁴ presumably for petitioner's sale of items and services *other than fuel*, i.e., car repairs, soda, etc.

5. By a letter dated September 8, 2000 to petitioner, the auditor advised that petitioner's tax records for its sales and use tax liability for the period December 1, 1996 to November 30,

² Petitioner concedes that the dollar amounts reported were estimates based on its accountant's review of its bank deposits. An estimate was made allocating the amount of bank deposits between fuel sales and nonfuel sales because the accountant "couldn't tell what was repairs and what was gallonage [from his review of bank deposits], so I had to guess the breakout" (tr., p. 130).

³ Neither party introduced into evidence petitioner's sales tax returns at issue. Rather, the Division introduced into evidence a schedule prepared by its auditor, included in its Exhibit "Q", which listed the amounts reported by petitioner on its returns.

⁴ Since neither party introduced into evidence petitioner's sales tax returns at issue, it cannot be determined why the schedule prepared by the auditor listed petitioner's taxable sales reported on its quarterly sales tax returns as totaling only \$950,057.00, when as detailed in Finding of Fact "3", petitioner's taxable sales of gasoline and diesel fuel totaled \$5,196,383.00.

2000⁵ “have been scheduled for a field audit.” This letter made the following specific request for books and records:

All books and records pertaining to your sales and use tax liability, for the period under audit, must be available on the appointment date. This includes financial statements, journals, ledgers, sales invoices, purchase invoices, cash register tapes, sales and use tax returns, federal income tax returns, and exemption certificates. . . .

During the course of the audit, you may be required to furnish additional records and/or information.

6. The auditor received no sales records, in particular daily shift reports, from petitioner. Consequently, he performed an estimated audit of petitioner’s sale of gasoline and diesel fuel during the three-year period at issue. By analyzing petitioner’s fuel purchases, the auditor determined gallonage sold. As detailed in Finding of Fact “2”, petitioner reported the sale of 4,692,004 gallons of fuel during the three-year audit period. The auditor’s review disclosed that, in fact, petitioner reported on its tax returns 206,664 *more* gallons sold than it actually sold, as follows:

Quarter Ended	Gallons reported sold	Audited gallons sold	Difference
02/28/98	401,939	380,356	21,583
05/31/98	364,725	387,068	(22,343)
08/31/98	415,802	382,438	33,364
11/30/98	395,493	329,276	66,217
02/28/99	385,651	366,756	18,895
05/31/99	366,652	378,782	(12,130)
08/31/99	391,769	401,530	(9,761)
11/30/99	375,601	366,970	8,631

⁵ The audit period was later modified to a starting date of December 1, 1997 since the period of limitation had expired with regard to the earlier period of December 1, 1996 to November 30, 1997.

02/29/00	384,232	365,270	18,962
05/31/00	385,896	397,344	(11,448)
08/31/00	439,323	365,460	73,863
11/30/00	384,921	364,090	20,831
Totals	4,692,004	4,485,340	206,664

In calculating an audited total for taxable sales for the three-year period, the auditor treated half of the gallons as having been sold as self-service gallons and half sold as full-service gallons since he did not have actual sales records, and, in his opinion, Garden City, the location of the premises, was an affluent community.⁶ He also utilized per gallon selling prices “that were taken from Mr. Della Rocca’s [petitioner’s former representative and preparer of its tax reports] average pricing schedules”(tr. pp. 74-75). For example, for the quarter ending February 28, 1998, the auditor calculated petitioner’s gross sales of fuel in the amount of \$499,585.76 as follows:

Fuel Type	Audited # of Gallons	x Audited selling price	Gross Sales
Regular Self Service 50%	100,265	1.2390	\$124,228.34
Mid Self Service	30,117	1.3450	40,507.37
Premium Self Service	54,932	1.4020	77,014.66
Diesel Self Service	4,864	1.4020	6,819.33
Regular Full Service 50%	100,265	1.2890	129,241.59
Mid Full Service	30,117	1.3950	42,013.22
Premium Full Service	54,932	1.4520	79,761.26

⁶ To the contrary, the Division’s answer stated that the auditor “calculated a ratio based upon *observation* of the business that 70% of the business’s revenue came from self serve gasoline and 30% was derived from full service gasoline (emphasis added).” Furthermore, the auditor relied on a “Service Station Retail Inspection” report, which included significant errors, namely wrongly reporting that petitioner sold cigarettes, which it did not, and that it was open 24 hours, 7 days per week, which it was not.

Diesel Full Service	4,864	1.4520	7,062.53
Totals	380,356 ⁷		\$499,585.76 ⁸

The auditor computed petitioner's gross sales in a similar manner for the other 11 quarters included in the audit period, which resulted in an amount for total gross sales for the three-year period at issue of \$6,320,891.27.⁹

The auditor then calculated petitioner's taxable sales subject to sales tax of \$5,494,989.91 by backing out New York State excise tax and dividing such amount by 1.0850 to determine taxable sales. He then applied the Nassau County sales tax rate of 0.0850 to audited taxable sales of \$5,494,989.91 to calculate total audited sales tax of \$467,074.14 for the three-year period at issue.

He then finally calculated that petitioner had "tax due from understating sales tax on FR schedule" in the total amount of \$25,381.54 consisting of the following:

Quarter Ended	Reported sales tax on FR schedule	Audited sales tax	Tax due from understating sales tax on FR schedule
02/28/98	\$ 35,263.95	\$ 36,754.26	\$ 1,490.31
05/31/98	32,016.36	35,510.19	3,493.83
08/31/98	36,471.89	34,584.31	(1,887.58)

⁷ There is no specific explanation in the record why this amount for total gallons sold for the quarter ending February 28, 1998 of 380,356 varies from the amount shown in Finding of Fact "2" for the same quarter of 401,939. The auditor testified that he determined petitioner's gallons sold during the audit period based on a review of its purchases. Perhaps, petitioner reported more gallons sold for this quarter of 401,939 than the lesser amount of gallons of 380,356 determined by the auditor in reviewing purchases.

⁸ The auditor incorrectly added these amounts and came up with a total of \$499,585.76 as indicated above, when the correct total is \$506,648.30. Since this error works to the advantage of petitioner, no correction is required.

⁹ This total amount was never actually calculated by the auditor on the relevant schedule included in the record.

11/30/98	34,673.63	29,026.58	(5,647.05)
02/28/99	33,834.51	29,812.15	(4,022.36)
05/31/99	32,177.69	33,907.77	1,730.08
08/31/99	33,389.62	39,336.36	5,946.74
11/30/99	32,958.07	40,790.16	7,832.09
02/29/00	41,477.88	41,086.42	(391.46)
05/31/00	41,655.61	49,519.34	7,863.73
08/31/00	54,383.77	48,960.43	(5,423.34)
11/30/00	33,389.62	47,786.17	14,396.55
Totals	\$441,692.60	\$467,074.14	\$25,381.54

7. In addition to the auditor's assertion that petitioner was liable for tax due from understating sales tax on its FR schedules, as detailed in Finding of Fact "6", he also calculated that petitioner was liable for "tax due resulting from excess credit taken" in the total amount of \$17,361.11, based upon his computation that petitioner had claimed an excess credit in the amount of \$17,644.66 on its purchases of motor fuel, against which he subtracted \$283.56 since he computed that petitioner had claimed an *insufficient* excess credit for its purchases of diesel fuel. The excess credit taken of \$17,644.66 on petitioner's purchases of motor fuel was calculated as follows:

Quarter Ended	Reported motor fuel prepaid credit	Audited motor fuel prepaid credit	Tax due resulting from excess credit taken
2/28/98	\$ 34,151.00	\$ 32,244.46	\$ 1,906.54
05/31/98	30,922.00	32,793.00	(1,871.00)
08/31/98	32,110.00	29,383.02	2,726.98
11/30/98	30,485.00	25,072.55	5,412.45
02/28/99	29,756.00	28,280.66	1,475.34

05/31/99	28,254.00	29,195.87	(941.87)
08/31/99	26,801.00	27,434.12	(633.12)
11/30/99	25,662.00	24,981.81	680.19
02/29/00	26,273.00	24,973.27	1,299.73
05/31/00	26,390.00	27,251.07	(861.07)
08/31/00	39,589.00	32,950.35	6,638.65
11/30/00	34,585.00	32,773.16	1,811.84
Totals	\$364,978.00	\$347,333.34	\$17,644.66

The insufficient excess credit taken of \$283.56 on petitioner's purchases of diesel fuel was calculated as follows:

Quarter Ended	Reported diesel fuel prepaid credit	Audited motor fuel prepaid credit	Tax due resulting from excess credit taken
02/28/98	\$ 874.00	\$904.61	(\$30.61)
05/31/98	865.00	942.46	(77.46)
08/31/98	776.00	871.50	(95.50)
11/30/98	773.00	987.87	(214.87)
02/28/99	747.00	727.83	19.17
05/31/99	747.00	764.60	(17.60)
08/31/99	632.00	682.45	(50.45)
11/30/99	639.00	717.53	(78.53)
02/29/00	632.00	675.07	(43.07)
05/31/00	632.00	570.98	61.02
08/31/00	774.00	627.89	146.11
11/30/00	774.00	675.79	98.21

Totals	\$8,865.00	\$9,148.58 ¹⁰	(\$283.58)
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8. The Division issued a Notice of Determination dated December 10, 2001 against petitioner asserting tax due of \$45,449.94¹¹ plus interest and penalties under section 1145 of the Tax Law. The auditor, who was scheduled to have a meeting at the Division's offices in the World Trade Center on September 11, 2001, survived the terror attacks but was overwhelmed by the loss of "40 people from our office," and later that autumn had left a message with petitioner's representative that his audit of petitioner would result in "no change" (tr., p. 116). However, after leaving his message with petitioner's representative, the auditor subsequently conferred with his supervisor who persuaded him that he had made a mistake in not pursuing an assessment against petitioner and that his "original work of \$42,000 looks correct, go with it" (tr., p. 117). Consequently, the Notice of Determination dated December 10, 2001 was issued against petitioner.

9. At the hearing, petitioner introduced into evidence a stack of invoices which it asserted represented its nonfuel repair invoices for the audit period. According to its accountant, they totaled \$468,000.00, and if sales of oil and transmission fluids sold at the pump are added based on an estimate of 10 per day, with an estimated \$2.50 average selling price, the total nonfuel sales for the three-year period would be \$495,000.00 rather than nonfuel sales reported on

¹⁰ The auditor's schedule shows a minor two cents error in this total amount, i.e., \$9,148.56 instead of the above amount as well as a two cents error in the final column of this table which has also been corrected above.

¹¹ As noted in Finding of Fact "6", the Division calculated "tax due from understating sales tax on FR schedule" in the total amount of \$25,381.54, and as noted in Finding of Fact "7", "tax due resulting from excess credit taken" in the total amount of \$17,361.11. The sum of these two amounts is \$42,742.65, an amount \$2,707.29 less than the \$45,449.94 asserted in the Notice of Determination dated December 10, 2001. The record contains no explanation for this variance. In particular, no statement of proposed audit adjustment was introduced into the record in support of the assessment which is somewhat unusual. There is no explanation in the record for such failure. Consequently, the Notice of Determination, in the first instance, must be modified to conform to the lesser amount of tax determined due by the auditor of \$42,742.65.

petitioners tax returns of \$950,057.00, as detailed in Finding of Fact “4.” Furthermore, according to petitioner’s accountant, the allocation between self-service sales of fuel and full-service sales should be 2/3 self-service and 1/3 full service. According to Patti Fiorentine, who was employed by petitioner for ten years as its bookkeeper and versatile employee and who was its jill-of-all-trades, except auto repairing,¹² petitioner had no other employees other than family members, and, in particular, no “gas jockey” to provide full service at the gasoline pumps. Rather, her husband and brother-in-law, taking time from doing car repairs, as well as herself, on occasion, would pump gasoline.

SUMMARY OF THE PARTIES’ POSITIONS

10. Petitioner contends that the Division “cherry picked” its data to establish a deficiency since its own analysis shows that petitioner reported too much sales tax due on its repair services which cancels out any tax due on its fuel sales. Petitioner conceded that its “recordkeeping is not the best, bookkeeping is not the best . . . because of that the accounting was not the best” and as a result it estimated the amount of sales tax due on its tax returns (tr., p. 15). Petitioner did not “dispute the auditor’s findings as to the gallonage sold” (tr., p. 15). Further, “we really don’t dispute the amount per gallonage that [the Division is] claiming our client sold” (tr., p. 15). In addition, “we don’t dispute . . . certain tax credits or overage of tax credits our client took” (tr. pp. 15-16). Petitioner explains that it “took a little too much prepaid tax” because it “overstated [its] purchases of gallonage” (tr., p. 16). Petitioner contends that when its accountant prepared its estimated sales tax returns, he “wrongly allocated” sales tax between fuel sales (i.e., too little) and taxable repair services (i.e., too much), but that the “gross number is more or less correct”

¹² Ms. Fiorentine’s husband, Phil, and her brother-in-law, Joe Fiorentine, were mechanics responsible for auto repairs.

(tr., pp. 16-17). Petitioner asserts that the auditor should have been required to audit its nonfuel sales, and if he had done so would have discovered petitioner's overreporting of sales tax due on such nonfuel sales. It complains that the auditor tested its nonfuel sales for only two sales tax quarters in 2000 and after deciding to make no change to such nonfuel sales, he improperly decided not to go any further in his examination of nonfuel sales, in particular, petitioner's repair invoices.

11. The Division maintains that it selected an audit method that reasonably calculated the tax due in light of petitioner's failure to maintain and provide to its auditor adequate books and records. It contends that it was not its obligation to go through petitioner's invoices for its nonfuel sales to calculate any "offset" against sales tax determined due as a result of its examination of petitioner's fuel sales (tr., p. 18). In any event, the Division contends that petitioner's nonfuel sales records were also inadequate. Invoices provided at the hearing document, on average, only one car repair per day and five inspections per month which is unreasonable given the four repair bays "and the fixed costs of keeping a business up and running" (Division's brief, p. 9). The invoices presented at hearing also appear incomplete given "the absence of small repairs such as tire repairs, light bulb replacements, and the like" (Division's brief, p. 9).¹³ Therefore, "petitioner's claim that its repair invoices included all repair sales cannot be substantiated" (Division's brief, p. 8). In addition, the Division contends that petitioner failed to account for payment of expenses by cash which supports its contention that petitioner had unreported sales, despite the testimony of petitioner's accountant who said the business had no cash disbursements. According to the Division, reported salary expenses were

¹³ Despite reserving time to file a reply brief to the Division's brief, petitioner failed to do so, and did not respond to the arguments made by the Division in its brief.

too low based on the experience of the auditor, with the implication that petitioner therefore must have paid some salary expenses by cash. Further, the Division contends that Patti Fiorentine, who was in charge of depositing the daily cash receipts, worked only a few hours per day suggesting that other employees had access to cash receipts, and “no documentary evidence exists to support the petitioner’s claim that no cash disbursements were made” (Division’s brief, p. 7). In addition, the Division rejects Ms. Fiorentine’s testimony that all expenses were paid *by check* suggesting that other employees might pay vendors “who made deliveries at any time during the day” with cash (Division’s brief, p. 7).

CONCLUSIONS OF LAW

A. Every person required to collect sales tax must maintain records sufficient to verify all transactions, in a manner suitable to determine the correct amount of tax due (Tax Law § 1135[a][1]). As noted in Finding of Fact “6”, petitioner did not maintain records sufficient to verify its fuel sales. Consequently, the Division’s right to resort to an estimate of its fuel sales, as long as it selected an audit method reasonably calculated to reflect the sales and use taxes due, remains unassailable (*see, Matter of W. T. Grant v. Joseph*, 2 NY2d 196, 204, 159 NYS2d 150, 157, *cert denied* 355 US 869, 2 L Ed 2d 75).

B. However, the auditor’s treatment of half of the gallons as having been sold as self-service gallons and half sold as full-service gallons based merely upon his *opinion* that Garden City, the location of the premises, was an affluent community, resulted in an audit method not reasonably calculated to reflect the sales and use taxes due on petitioner’s fuel sales. Rather, the testimony of petitioner’s long-term accountant that the allocation between self-service sales and full-service sales should be 2/3 self-service and 1/3 full service, bolstered by the albeit somewhat puzzling position of the Division set forth in its answer to the petition, as noted in Footnote “7”,

that the auditor “calculated a ratio based upon *observation* of the business that 70% of the business’s revenue came from self serve gasoline and 30% was derived from full service gasoline [emphasis added]” cuts against the auditor’s use of a 50-50 allocation. Any such “observation” was left unmentioned in the course of the auditor’s testimony if, in fact, one had been conducted. Rather, he testified that his allocation was justified merely by the affluence of the Long Island community where the business was located. As noted in Finding of Fact “6”, petitioner reported on its tax returns 206,664 *more* gallons sold than it actually sold. This extremely unusual scenario further supports a conclusion that petitioner did not underreport sales tax due on its fuel sales. The small deficiency of \$25,381.54 asserted by the Division on petitioner’s taxable sales of fuel of approximately \$5.5 million over a three-year period results from an unreasonable allocation of sales to full-service sales. Furthermore, as noted in Finding of Fact “8”, the auditor at one point in the autumn of 2001 had advised petitioner that his audit of petitioner would result in “no change.” Although the Division now seeks to explain the auditor’s concession as a result of surviving the terror attacks on the World Trade Center and his feeling of being overwhelmed, the auditor’s initial decision that his audit should result in “no change” concerning petitioner’s fuel sales was correct, and he altered his decision only at the direction of his supervisor. In sum, the opinion of the auditor that Garden City is a wealthy Long Island community is simply an insufficient basis to support his method of allocating petitioner’s fuel sales between self-service and (higher priced) full-service sales (*see, Matter of Paladino*, Tax Appeals Tribunal, June 30, 1994 [wherein the Tribunal decided that an assessment of additional tax on fuel sales was properly set aside upon the taxpayer’s demonstration that the Division proceeded upon a fundamentally erroneous principle]).

C. Turning to the other main issue in this proceeding, the burden of proof was on petitioner to prove that it overreported sales tax due on its nonfuel sales, namely repair services (*Matter of Evangelista*, Tax Appeals Tribunal, September 27, 1990). It has clearly failed to meet this burden. Presenting a stack of invoices without presenting the testimony of either Phil or Joe Fiorentine, who prepared and had personal knowledge of such invoices must be held against petitioner (*see, Matter of Meixsell v. Commissioner of Taxation*, 240 AD2d 860, 659 NYS2d 325, *lv denied* 91 NY2d 811, 671 NYS2d 714; *Matter of Greenwald*, Tax Appeals Tribunal, November 24, 1993). Further, the Division rightly points out the shortcomings in such invoices as detailed in paragraph “11” and also correctly emphasizes the inadequacies in petitioner’s operation with regard to its controls over cash receipts. Consequently, petitioner’s claim asserted at the hearing for an offset or refund of an alleged overpayment of sales tax on its nonfuel sales is denied. In addition, it must be noted that petitioner’s assertion that the Division was required to audit its nonfuel sales has no basis in law or regulations and the numerous cases cited by petitioner are not apposite. The Division only estimated petitioner’s fuel sales. If it had estimated petitioner’s nonfuel sales for purposes of asserting a tax deficiency for such sales, then it would have first been required to establish that it was unable to conduct a detailed audit of petitioner’s records of such nonfuel sales before resorting to an estimate for such nonfuel sales (*see, e.g., Matter of Marine Midland Bank*, Tax Appeals Tribunal, May 13, 1993). Moreover, given the incompleteness of the invoices presented at hearing and petitioner’s lack of adequate controls over its cash receipts, it would have been tempting an adverse outcome to have had its nonfuel sales audited by the Division.

D. As noted in paragraph “10”, petitioner concedes that additional sales tax is due based upon “overage of tax credits” taken by petitioner, and as detailed in Finding of Fact “7”, this overage was in the amount of \$17,361.11.

E. As noted in Footnote “12”, the Notice of Determination must be corrected as a result of what appears to be an arithmetic error to the disadvantage of petitioner. There is no explanation in the record for the total amount of tax asserted due in the Notice of Determination of \$45,449.94, which is \$2,707.29 greater than the amounts calculated due by the Division for the reasons described above which totaled only \$42,742.65.

F. Finally, penalties may be assessed on the recomputed sales tax deficiency since basing the reporting and payment of tax due by merely *estimating* the amount of tax due does not provide a basis to abate penalties even if the deficiency is a small amount (*see, Matter of A & A Service Station, Inc.*, Tax Appeals Tribunal, February 5, 2004).

G. The petition of Mopak Service Center is granted to the extent indicated in Conclusions of Law “B” and “E”, and the Notice of Determination dated November 20, 2000 is to be modified to so conform, but, in all other respects, the petition is denied.

DATED: Troy, New York
January 6, 2005

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE